UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES ATLANTA BRANCH OFFICE

PPG AEROSPACE INDUSTRIES, INC.

and

CASES 10-CA-36530 10-RC-15611

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

Gregory Powell, Esq., for the General Counsel.
George N. Davies, Esq., for the Charging Party Petitioner.
John J. Coleman, III and Amy K. Jordan, Esqs., for the Respondent Employer.

SUPPLEMENTAL DECISION

LAWRENCE W. CULLEN, Administrative Law Judge: I issued my Decision in this case on October 19, 2007, finding, inter alia, that the Respondent violated the Act by more closely scrutinizing and monitoring the movements and conversations of its employees because of their support of the Union and by threatening loss of benefits because its employees supported the Union. My finding regarding the allegation of scrutinizing and monitoring was based upon several incidents including an incident on September 1, 2006, in which Supervisor Sue Cooper directed prounion employee Iva Mayes not to become involved in a conversation between prounion employee Rodney Brownsfield and antiunion employee Jeff Lindsey because she "couldn't let two Union people gang up on a non-union person." With regard to the threat relating to benefits, I found that Supervisor Cooper told employee Mayes that employees "would probably lose that [their salary continuance benefit] with all this union stuff." A representation election was held in an appropriate unit of the Respondent's employees on October 18, 2006. The critical period was from August 30, 2006,

¹ My initial decision refers to Brownfield, as does the Respondent's brief, which also spells Lindsey as Lindsay. The spellings used herein are as the names appear in the transcript.

until October 18, 2006. The Union filed timely objections to conduct affecting the election. I found that the foregoing and other conduct constituted objectionable conduct and that the conduct occurred within the critical period.

On September 30, 2008, the Board, in *PPG Aerospace Industries*, 353 NLRB No. 23 (2008), inter alia, remanded this case to me "for the limited purposes of (a) reconsidering ... [my] crediting of [employee Iva] Mayes over [Supervisor Sue] Cooper regarding these two statements, (b) explaining, more fully, the basis for ... [my] credibility determinations upon reconsideration, and (c) modifying, if necessary, ... [my] credibility based findings that Cooper's disputed statements violated Section 8(a)(1)."

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Although my decision points out that Mayes was a current employee, the Board states that I did not adequately explain my credibility resolutions. With regard to the first statement, the Board notes that my decision did not state that Cooper denied making the statement. With regard to both statements, the Board notes that Mayes did not include either statement in a handwritten incident report that she gave to the Union and that she "offered no explanation" for the omission.

The unsworn handwritten incident report that Mayes provided to the Union was received as Respondent's Exhibit 2. After being confronted with the omission of the two statements in the handwritten incident report, omissions that Mayes acknowledged, she spontaneously stated that "[w]hen I did the statement I had notes," thereby implying that the notes contained the statements. In earlier testimony, Mayes had stated that her notes were at her home. Counsel for the Respondent did not request that she retrieve the notes or inquire further with regard to the contents of the notes to which Mayes referred. Thus, although Mayes gave no specific explanation for the omission of the statements in the incident report, no explanation was sought. Whether her notes contained the statements was not established on the record.

The issue, of course, is not what Mayes wrote in the unsworn report or in her notes, but what Supervisor Cooper said. Mayes provided a pretrial affidavit to the Regional Office that was provided to Counsel for the Respondent at the hearing. Counsel did not examine Mayes with regard to any discrepancies between her sworn testimony and her pretrial affidavit. I am satisfied that, had there been any discrepancy, Counsel for the Respondent would have pointed that out.

My decision implies that Cooper denied the "gang up" statement insofar as it does not state that Mayes' testimony regarding the "gang up" statement was uncontradicted, and it does credit Mayes, pointing out that she was a current employee.

I am mindful that one's status as a current employee, although a "significant factor" among other factors in resolving credibility, creates no presumption of truthfulness. However, precedent establishes that "the testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interest." *Flexsteel Industries*, 316 NLRB 745 (1995).

In making my initial decision, I considered all of the evidence before me. There was nothing in the demeanor of either Mayes or Cooper that enhanced or detracted from their credibility. I based my credibility determinations upon various factors including, but not limited to, Mayes' status as a current employee, Cooper's status as a supervisor, established facts, "inherent probabilities, 'and reasonable inferences which may be drawn from the record as a whole." *Daikichi Sushi*, 335 NLRB 622, 623 (2001).

Consistent with the Board's remand, I have reconsidered my crediting of Mayes and shall explain in more detail the basis for my credibility determinations based upon the evidence.

With regard to the first statement, Mayes explained that, on September 1, 2006, she left her work area to see what prounion employee Rodney Brownsfield and antiunion employee Jeff Lindsey were talking about at Lindsey's work station, referred to as a work "cell." Cooper "came over" and told Mayes that she needed to go back to work, that she, Cooper, "couldn't let two Union people gang up on a non-union person." Cooper then escorted Mayes back to her work cell, the first instance upon which she had done so. The foregoing testimony was elicited in support of the complaint allegation that the Respondent scrutinized and monitored the movements and conversations of union supporters.

Supervisor Cooper's first denial of the "gang up" comment followed testimony elicited by Counsel for the Respondent who asked whether she recalled a conversation "involving a question by Rodney Brownsfield during the month or so prior to the election." In response to that question, without specifying a date, Cooper related that she observed at least four employees at Lindsey's work cell: Lindsey, Brownsfield, and John Smith and Dan Utter. Cooper approached them and the employees asked her about a posting concerning layoff priority between PPG and contract employees. According to Cooper, employee Brownsfield asked for a copy of the posting. She testified that Mayes left her work cell to join the conversation, and that she, Cooper, told Mayes "to go back to your work station," that everybody "needs to go back." She denied walking back with Mayes to Mayes' work cell. She denied making the "gang up" comment at that time. Counsel for the Respondent later asked Cooper, "Did you ever say that to her whether it was that conversation or any other?" Cooper answered, "No." Cooper was not asked whether she had, on any other occasion, escorted Mayes back to her work station.

The posting regarding layoff priority is dated August 21, 2006. There is no evidence that it was still a topic of conversation on September 1, 2006, two days after the representation petition was filed on August 30, 2006. None of four employees that Cooper identified as participating in the conversation testified, thus her testimony was uncorroborated. Cooper did not place a date upon her conversation with the four employees regarding the posting.

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My initial decision incorrectly states that Mayes testified that the conversation occurred at Brownsfield's work cell. She testified that the conversation was at Lindsey's work cell.

The predicate for Cooper's first denial of the "gang up" comment was the foregoing conversation. On that occasion there was no potential for any ganging up. The conversation was about the posting, and Cooper was involved in it. The incident to which Mayes testified related to her attempt to join fellow prounion employee Brownsfield in what, at that time, was a one-on-one conversation between him and antiunion employee Lindsey. Mayes testified that Cooper prevented her from doing so. The fact that, after Cooper's first denial, Counsel asked her if she made the "gang up" comment, "whether it was that conversation [the posting conversation] or any other," was obviously necessary in order to establish a denial of the incident to which Mayes testified. I do not credit that denial.

"Gang up" is a colloquial expression. Mayes attribution to Cooper of the colloquial statement, "gang up on a non-union person" did not seem rehearsed or fabricated. This was not the group gathering in which Cooper participated. Mayes was seeking to join prounion employee Brownsfield at Lindsey' work cell, and Cooper did not want them to "gang up." Upon reconsideration, I reaffirm my finding that, when Mayes attempted to join the conversation between Brownsfield and Lindsey, Supervisor Cooper stated to Mayes that she "couldn't let two Union people gang up on a non-union person" and then escorted Mayes back to her work station.

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Regarding the second statement relating to a threat of loss of benefits, salary continuance is a benefit, full pay, given to employees under a doctor's care after the employee misses six days of work. The length of time that the benefit is paid is dependent upon "how long you have been employed at PPG." As noted in my initial decision, Mayes had been a beneficiary of that benefit, and had received salary continuance during a period when Cooper was her supervisor.

Mayes testified that, on September 1, 2006, when Cooper had escorted her back to her work station, Cooper stated that she was "afraid of the unknown and would rather go with the known." She asked Mayes whether she had "ever missed a paycheck," and Mayes answered, "No." Mayes reminded Cooper that she had received salary continuance. Cooper did not deny that she was aware that Mayes had received salary continuance. Cooper stated that "we would probably lose that [salary continuance] with all this union stuff."

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Cooper denied asking Mayes whether she had ever missed a paycheck or stating that employees would probably lose salary continuance, but she admitted discussing salary continuance in response to questions from "people," none of whom she identified as Mayes. She testified, "I know I was asked about salary continuance, would that go away, and the only response that I had was that as far as PPG, none of our union plants had the benefit of salary continuance." The Respondent's brief notes that Supervisor Cooper's statement was "truthful information," and that it was "both lawful and appropriate" for her to convey that information.

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Insofar as Cooper acknowledged answering questions about salary continuance from "people," albeit not Mayes, I find it incredible that Cooper would not have mentioned salary continuance to Mayes in view of her awareness that Mayes had received the benefit. I credit

Mayes that Cooper did speak with her about salary continuance. Cooper's failure to acknowledge any such conversation with Mayes suggests that, when speaking with Mayes, Cooper phrased the truthful information, "none of our union plants had the benefit," as a threat: "[W]e would probably lose that [salary continuance]." Upon reconsideration I reaffirm my finding that Cooper, who admitted informing other employees that "none of our union plants had the benefit of salary continuance," informed Mayes, who is a current employee and not a discriminatee, that "we would probably lose that [salary continuance] with all this union stuff."

I have reconsidered my crediting of Mayes and have reaffirmed and more fully explained my basis for those credibility determinations. Having reaffirmed those determinations, I need not modify my findings regarding the alleged Section 8(a)(1) violations.³

Dated, Washington, D.C., December 12, 2008.

20 Lawrence W. Cullen
Administrative Law Judge

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If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.